

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT E. BAILEY,

Defendant-Appellant.

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UNPUBLISHED

January 7, 2010

No. 278047

Grand Traverse Circuit Court

LC No. 03-009349-FH

AFTER REMAND

Before: Saad, C.J., and Sawyer and Beckering, JJ.

PER CURIAM.

Defendant was convicted and sentenced on two counts of conspiracy to deliver less than 50 grams of cocaine, MCL 750.157a and MCL 333.7401(2)(a)(iv), on April 13, 2007. On September 23, 2008, this Court affirmed defendant's conviction and sentence. On March 16, 2006, the Michigan Supreme Court reversed defendant's conviction on count II and remanded the case for further proceedings in light of *People v Mezy*, 453 Mich 269; 551 NW2d 389 (1996), on the issue of double jeopardy. On May 1, 2009, this Court remanded this case to the trial court for a decision on the double jeopardy issue, retaining jurisdiction. Finally, on August 11, 2009, the trial court denied defendant's motion to reverse his conviction as to count II and vacate his sentence. This matter is again before us following remand and we again affirm.

Defendant argues that the trial court committed error requiring reversal by denying his motion to reverse count II of his conviction based on double jeopardy. We disagree.

This Court reviews de novo a question of constitutional law. *People v Smith*, 478 Mich 292, 298; 733 NW2d 351 (2007). If the determination rests on a question of statutory interpretation, the standard of review is de novo. *People v McIntire*, 232 Mich App 71, 84; 591 NW2d 231 (1998). If the question is factual in nature, review is for clear error. MCR 2.613(c); MCR 6.001(D); *People v Gistover*, 189 Mich App 44, 45-46; 472 NW2d 27 (1991).

In determining whether there are two conspiracies or only one, the "totality of circumstances" test is used. *Mezy*, *supra* at 285. The Court relied on several factors including: 1) time; 2) persons acting as conspirators; 3) the statutory offenses charged; 4) the overt acts charged or any other description of the offenses charged that indicate the nature and scope of the activity that the government sought to punish in each case; and 5) places where the events alleged as part of the conspiracy took place.

A review of the trial court's decision shows that the trial court analyzed the case in light of *Mezy* and properly applied that case. The court explicitly stated that it decided based on the totality of the circumstances that there were two separate conspiracies, and therefore double jeopardy did not apply. We are not persuaded that the trial court erred in applying *Mezy* to this case.

Affirmed.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Jane M. Beckering